IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 176 of 1986

in

SPECIAL CIVIL APPLICATIONNo 804 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JS RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 176 of 1986
NOTICE SERVED for Appellant No.
MS SONAL VYAS AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE A.M.KAPADIA

Date of decision: 23/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant appeal under clause 15 of the Letters Patent, the appellant has challenged legality of (a) judgment dated January 13, 1986 rendered by the learned Single Judge in Special Civil Application No. 804 of 1985 by which prayers made by the appellant (i) to issue a writ of mandamus or a writ of certiorari or any other appropriate writ or order directing the respondents to treat the appellant as an eligible candidate for promotion to the ex-cadre post in Gujarat Administrative Service alongwith others and accordingly grant promotion with effect from June 1984 and (ii) to set aside the order of Government of Gujarat No. DPE/1180/3255/M dated September 23, 1983 imposing the penalty of stoppage of one increment with future effect, are rejected and (b) the legality of order dated April 29, 1986 rendered by the learned Single Judge in MCA No.63 of 1986 by which prayer made by the appellant to review judgment dated January 13, 1986 rendered in Special Civil Application No. 804 of 1985, is refused.

2. The appellant was serving in Gujarat Administrative Service. Prior to 1974 a person serving in the Gujarat Administrative Service had only one avenue open for promotion and that was in the cadre of Indian Administrative Service. For the first time selection grade was created in the year 1981. There were also some ex-cadre posts for the members of Indian Administrative Service. The grievance of the appellant was that when selections were made he was left out without any reason and his case was not considered. Further, a penalty of stoppage of one increment was imposed on the appellant at the conclusion of departmental inquiry initiated against him and the grievance made by the appellant was that the imposition of punishment upon him was illegal, null and void because the inquiry was vitiated. Under the circumstances, Special Civil Application No.804 of 1985 was filed by the appellant claiming the reliefs which have been referred to earlier.

3. The petition filed by the appellant was heard alongwith Special Civil Application No.4314 of 1985 filed by one Shrikant D. Vadera wherein also similar grievance was made. Both the petitions were rejected by the learned Single Judge vide judgment dated January 13, 1986.

4. The appellant and the petitioner of Special Civil Application No.4314 of 1985 were of the opinion that while dismissing the petitions the learned Single Judge had failed to notice principle of law laid down by the learned Single Judge of this Court in Special Civil Application Nos. 3955 of 1981 and 3080 of 1981 decided on February 8, 1982. Therefore, the appellant had filed Misc. Civil Application No. 63 of 1986 for review of the judgment dated January 13, 1986 rendered in Special Civil Application No. 804 of 1985 whereas Mr. S.D. Vadera who had filed Special Civil Application No.4314 of 1985 had filed MCA No.62 of 1986 for review of judgment rendered in Special Civil Application No.4314 of 1985. The review applications have been rejected by the learned Single Judge vide order dated April 29, 1986 which has given rise to instant appeal at the instance of the appellant.

5. On elevation of the learned advocate of the appellant on Bench, a notice was issued to the appellant calling upon him to make necessary arrangement for his appearance in the matter either in person or through lawyer. Though the notice is duly served upon the appellant the appellant has neither appeared in person nor through lawyer to prosecute the appeal. The Board indicates that the appeal is listed for hearing on 20 different occasions. The appeal is very old, that is, of the year 1986. Under the circumstances, we have decided to dispose of the appeal with the assistance of Ms. Sonal Vyas, learned AGP appearing for the respondents.

6. From the record of the case, it is evident that there was misconception on the part of the appellant in treating ex-cadre post as promotional post. Nothing was produced before the learned Single Judge nor any rules or circulars are brought to the notice of the appellate Bench indicating that ex-cadre posts are promotional posts. The record would show that some officers selected for ex-cadre posts were sent on deputation for a stipulated term and the deputationists were receiving some higher emoluments. But the deputation cannot be regarded as promotion to a higher post. The judgment of the Division Bench in LPA No.217 of 1982 decided on December 15, 1982 does not bear out the contention of the appellant that ex-cadre post is a promotional post. Therefore, the view taken by the learned Single Judge that the appellant is not entitled to claim promotion is eminently just and is hereby upheld.

7. Further, the documents produced by the appellant

himself indicate that before imposing penalty at the conclusion of departmental inquiry which was initiated against the appellant, all the procedural requirements were followed by the respondents and that the appellant was given all the opportunities of being heard in his defence. Moreover, the punishment which was awarded to the appellant could not have been regarded to be disproportionate having regard to the nature of misconduct committed by him. Therefore, the learned Single Judge was justified in not interfering with the order of punishment imposed on the appellant.

8. On over all view of the matter, this court is satisfied that the view taken by the learned Single Judge is eminently just and no case is made out by the appellant to interfere with the same in instant appeal. The net result is that the appeal lacks merits and is liable to be dismissed.

9. For the foregoing reasons, the appeal fails and is dismissed. There shall be no orders as to cost.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

(karan)